

# **WESTERN AUSTRALIAN COLLEGE OF TEACHING AMENDMENT BILL 2007**

## **EXPLANATORY MEMORANDUM**

The purpose of this Bill is twofold. Firstly, it addresses a conflict in the *Western Australian College of Teaching Act 2004* that is preventing the making of regulations for the conduct of an election of members to the Board of the College of Teaching. Secondly, it addresses a number of other matters related to appointments and elections to the Board..

The College is managed by a Board of 19 members, nine of whom are appointed by the Minister and 10 of whom are elected by teachers registered with the College. The Chair of the Board is elected by the members of the Board.

In the current Act the provisions relating to the mechanics of the appointments, elections and the filling of casual vacancies appear in section 9 and Schedule 1 but the provisions have to be construed together. The nine ministerial appointments to the Board are made under section 9(1) from persons nominated by employer, union, university and parent bodies.

Under section 9(2) the 10 elected members of the Board are to consist in effect of seven government school teachers, elected by government school teachers; two Catholic school teachers elected by Catholic school teachers; and one Independent school teacher elected by Independent school teachers. Section 9(5) provides that these elections are to be conducted by the Electoral Commissioner in accordance with “rules” made for this purpose. Schedule 1 Clause 14 provides that until such time as elections are held, the Minister is to appoint the 10 teacher representatives as Interim Board members.

In 2006 the election of teacher members was brought to a halt following a disallowance of the electoral rules by the Legislative Council on the recommendation of the Joint Standing Committee on Delegated Legislation, which had found that several of the functions to be performed in relation to an election were to be vested in a returning officer rather than in the Electoral Commissioner as contemplated by section 9(5) of the Act. As a consequence the 10 Interim Board members appointed under Schedule 1 clause 14 in September 2004 continue to hold office until elections are held.

Following the disallowance, the Board of the College asked that the Government proceed with the drafting of regulations providing for the elections under section 86(1)(b) of the Act which enables regulations to be made for that purpose.

Parliamentary Counsel has advised, however, that such regulations cannot be drafted with confidence because there is an irreconcilable conflict between section 9(9) and Schedule 1 (principally clause 2(1)(b)(ii)). While the section states unequivocally that the term of office for an elected member is three years, the Schedule states that the term of office for a person elected to fill a casual vacancy may only be for the remainder of the period for which his or her predecessor in office was elected.

In order to rationalise the frequency of elections (and related costs), the Bill also provides for coinciding three year terms for elected members.

## CLAUSE NOTES

### Clause 1

Citation - formal clause

### Clause 2

Commencement – formal clause. Clauses 1 and 2 come into operation on the day of assent. The rest of the provisions are to come into operation on the day after that day.

### Clause 3

The Act amended is the *Western Australian College of Teaching Act 2004* – Formal clause

### Clause 4

This clause amends section 3 in the definition of “rules” to extend the meaning of that term to include regulations made by the Governor under section 86(1)(b).

### Clause 5

This clause amends section 9 -

- (a) In subsection (5), by deleting “by the Electoral Commissioner, appointed under the *Electoral Act 1907*” to avoid the problems that have arisen from the interpretation given to the current subsection which appears to require elections to be conducted by the Electoral Commissioner and for the rules to be consistent with that interpretation. The rules will now provide for the manner in which elections are conducted.
- (b) By inserting a new subsection (5a), to complement that amendment to enable rules to be made conferring functions on the Electoral Commissioner. The proposed new subsection will enable those rules to be read in conjunction with the powers and functions which enable the Electoral Commissioner to appoint officers to carry out duties for the purposes of conducting elections under another written law See 5F and 5G of the *Electoral Act 1907*.
- (c) To remove doubts about the ability of the Electoral Commissioner to recover costs of an election
- (d) To repeal subsection (9) which is inconsistent with the general scheme of Schedule 1 which makes comprehensive provision for all the matters relating to the terms of office of members and their replacement.

### Clause 6

Subclause (1) revises clauses 1 and 2 of Schedule 1.

New clause 1 is an interpretation provision.

New clause 2 comprehensively deals with the terms of office of appointed members and elected members.

It is intended that the terms of appointed members will be able to be staggered.

Normally, elected members will have a term of 3 years and the object of new subclauses (2) to (12) is generally to ensure that the subsequent members have coinciding three year terms of office:

- Subclause 2(2) relates to the term of an inaugural elected member enables the Minister to fix the date for the term of these members by notice in the Government Gazette (see new subclauses (11) and (12));
- Subclause 2(3) provides that the normal term of an elected member is to be three years after the occurrence of the vacancy - this will fix the commencement of the term of office for successive members);
- Subclause 2(4) provides that the term of an elected member filling a casual vacancy is to be the balance of the term of office of member he or she replaces;
- Subclause 2(5) provides that the term of office of a member appointed to a casual vacancy under new clause 3(2) (ie by appointment by the Minister) is for the balance of the term of the member replaced); and
- Subclause 2(6) (an existing provision - enables an appointed or elected member to continue in office in default of an appointment or election).

The terms of appointed and elected members will be subject to Clause 4 which deals with earlier resignation etc which remains unchanged (see new clause 2(7)).

Subclauses (2) and (3) of the Bill deal with casual vacancies in the office of an elected member where the remainder of the term of office is less than one year. New clause 3(2) inserted by subclause (3) enables casual vacancies in the office of elected member to be filled by appointment by the Minister if the remainder of the term of office is less than one year. In doing so the Minister is to appoint a person who the Minister considers is representative of the votes cast in the last election for that category of member. This undertaking will be given to the House in the Second Reading of the Bill.

Subclause (4) provides that the term of office of a person elected to replace the chair is to be the balance of the term of office of the person he or she replaces.

Subclause (5) provides that the term of office of chair becomes vacant upon resignation or at the end of the term of office of that person as a member of the Board.